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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,680

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Jean-Yves Lazennec

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466 7590 06/24/2010

YOUNG & THOMPSON
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EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

NOTIFICATION DATE

DELIVERY MODE

06/24/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/541,680	Applicant(s) LAZENNEC ET AL.	
	Examiner ANN SCHILLINGER	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25, 26, 31, and 32 recites the limitation "the arrangements" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-23, 25, 26, 29, 31, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Marlow (US Pat. No. 5,989,294). Marlow discloses the following of claim 21: an acetabular implant for hip prosthesis, comprising: a metallic hemispherical shaped cup (10; col. 1, lines 33-40) structured to be fixed to the bottom of an acetabular cavity of an iliac bone, said cup having an axis of symmetry; an insert (11); and a hemispherical kernel (13), said cup having an internal cavity adapted for receiving said insert (Fig. 2), said insert having a spherical internal cavity for receiving an assembly of said hemispherical kernel having universal movement (Figs. 1-4; col. 5, line 50 through col. 6, line 6), and said hemispherical kernel having an internal cavity (23) adapted to cooperate with a femoral head (15) with an articulation capability, wherein the spherical internal cavity of the insert and the internal spherical cavity of said hemispherical kernel have respectively a center of rotation, the respective centers of rotation

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being aligned on the axis of symmetry of the cup, and being non- coincident when the cup, insert, and kernel are assembled (Figs. 2-4).

Marlow discloses the following of claim 22: implant according to claim 21, wherein the internal cavity of the cup is provided with arrangements (12) for assembly at will, in a fixed manner, of the insert.

Marlow discloses the following of claim 23: implant according to claim 21, wherein the mobile kernel is provided with arrangements (27) for the assembly of a ring (20) to assure that the femoral head is retained.

Marlow discloses the following of claim 25: implant according to claim 21, wherein the arrangements of the internal cavity of the cup cooperate with complementary arrangements on the outside surface of the insert to make a fixation by a clipping effect (col. 3, lines 54-67).

Marlow discloses the following of claim 26: implant according to claim 25, wherein the arrangements are composed of a series of truncated circular contact surfaces (Figs. 1-2).

Marlow discloses the following of claim 29: implant according to claim 22, wherein the mobile kernel is provided with arrangements (27) for the assembly of a ring (20) to assure that the femoral head is retained.

Marlow discloses the following of claim 31: implant according to claim 30, wherein the arrangements (12) of the internal cavity of the cup cooperate with complementary arrangements on the outside surface of the insert to make a fixation by a clipping effect (col. 3, lines 54-67).

Marlow discloses the following of claim 32: implant according to claim 31, wherein the arrangements are composed of a series of truncated circular contact surfaces (Figs. 1-2).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marlow in view of Broderick et al. (US Pat. No. 5,156,626). Marlow discloses the invention substantially as claimed, however, Marlow does not teach using a split ring. Broderick et al. teaches a hip implant system with a split ring in col. 5, lines 45-65 for the purpose of providing an expandable ring which will provide additional frictional pressure and therefore, better hold that two parts of the prosthesis together. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Marlow by using a split ring in order to better hold the two parts of the prosthesis together.

Claims 27, 28, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marlow in view of Pappas et al. (US Pat. No. 4,624,674). Marlow teaches the invention substantially as claimed, however, Marlow does not teach what type of materials are used to construct the kernel and the femoral head. Pappas et al. teaches an acetabular implant system where the cup inserts and the femoral head may be made from metal or ceramic in col. 14, lines 45-60 for the purpose of utilizing the materials' biocompatibility. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the inserts and the femoral head of Marlow from metal and/or ceramic materials in order to utilize the materials' biocompatibility.

Response to Arguments

Applicant's arguments filed 3/25/2010 have been fully considered but they are not persuasive. The Applicant contends that the Marlow reference has an insert and a kernel whose centers of rotation are coincident. The examiner respectfully disagrees. The presence of the bearing balls (14) in the kernel does not allow the kernel to lay flush against the inner surface of the insert. This will push the center of rotation of the kernel below the center of rotation of the insert. Therefore, the two centers of rotation would not be located in the same place, thus meeting the claims' limitations.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./

Examiner, Art Unit 3774

/DAVID ISABELLA/

Supervisory Patent Examiner, Art Unit 3774